

WETLAND CONSERVATION ACT ALTERNATIVE EMERGENCY STANDARDS

WHEREAS, a Presidential Major Disaster was declared (FEMA, DR-4069) on July 6, 2012, for the following counties and tribal lands: Aitkin, Carlton, Cass, Cook, Crow Wing, Dakota, Goodhue, Itasca, Kandiyohi, Lake, Meeker, Pine, Rice, Sibley, St. Louis, and the Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, and the Mille Lacs Band of Ojibwe, due to damage resulting from severe storms and flooding during the period of June 14-21, 2012;

WHEREAS, the Wetland Conservation Act (WCA) is established in Minnesota Statutes, primarily Chapter 103G, and implemented via Minnesota Rule Chapter 8420;

WHEREAS, damage resulting from natural disasters can affect wetlands in ways not envisioned under normal circumstances, often requiring an immediate response to prevent further resource degradation and to protect public health, safety, and welfare;

WHEREAS, the standards and procedures required by WCA can delay necessary emergency response activities; and

WHEREAS, it is anticipated that the Minnesota Legislature, in an August 24, 2012 Special Session, will grant BWSR with the authority to establish alternative procedures during natural disasters via order of the Executive Director.

NOW, THEREFORE, BE IT RESOLVED, the Board adopts the following policy regarding emergency WCA procedures, contingent on the passage of related legislation:

I. Enactment

- A. WCA Alternative Emergency Standards may be enacted by the Board's Executive Director in instances of natural disasters or other emergencies requiring immediate response. The standards will be effective upon posting of the Executive Director's order on the Board's website. The order will also be published in the State Register as soon as possible thereafter. The order will specify the duration and counties for which the standards are in effect.

II. Wetland Delineation

- A. As necessary to complete emergency repair work, wetland boundaries and corresponding impacts may be identified after-the-fact in a timeframe sufficient to meet the appropriate submittal requirements identified below.
- B. Flooding and other natural disasters can sometimes obscure wetland indicators, making wetland delineation difficult. In these circumstances, the best available information may be used to determine the wetland boundary, including both on-site and off-site methods as appropriate.

- C. Some areas that met wetland criteria prior to the flood event may have been converted to a non-wetland due to sediment, gravel, or other solid material deposited by floodwaters or other natural disasters. Provided these areas no longer meet wetland criteria, they shall not be considered jurisdictional wetlands under the Wetland Conservation Act. If wetland characteristics re-develop under normal circumstances in the future due to settling, removal of sediment, etc., the area could revert back to a jurisdictional wetland.

III. Temporary Impacts

- A. A temporary wetland impact necessary for the repair of infrastructure damaged by the emergency or disaster that is rectified by repairing, rehabilitating, or restoring the affected wetland will qualify for a no-loss when:
 - 1) the physical characteristics of the affected wetland are restored to pre-project conditions sufficient to ensure that all pre-project functions are restored; and
 - 2) the activity is completed and the physical characteristics of the wetland are restored within 18 months of the start of the activity, unless an extension is granted by the local government unit after consultation with the technical evaluation panel.

The requirements of MN Rule 8420.0415, Item H, paragraphs (3) and (4) do not apply to a no-loss for purposes of emergency repair under this provision. Temporary impacts consistent with the above do not require an application or LGU approval, provided the impact site is restored to pre-impact conditions. Temporary stockpiles of debris or construction materials necessary for emergency repairs shall be considered temporary impacts and will not require wetland replacement under WCA when the area is restored to pre-project conditions in accordance with the above conditions.

IV. Exemptions

- A. Wetlands filled by the deposition of sediment or debris resulting solely from the disaster are exempt from replacement requirements of WCA. This exemption applies in addition to the existing exemptions specified in MN Rule 8420.0420. Removal of debris or sediment is also exempt if accomplished consistent with Section III above.

V. Wetland Replacement Plans

- A. For projects requiring a wetland replacement plan, the application, noticing, and decision procedures contained in MN Rule 8420.0255 do not apply provided that:
 - 1) the purpose of the project is for the emergency repair of existing public or private infrastructure, such as buildings, roads, bridges, or water control works damaged by the natural disaster;
 - 2) project impacts are minimized; and
 - 3) a complete wetland replacement plan is submitted to the Local Government Unit within 120 days of commencing the emergency repair work. Upon submittal of the replacement plan, the procedures and timelines of MN Rule 8420.0255 will apply.

The Local Government Unit may extend the timeframe for submittal of the replacement plan with notice to the Technical Evaluation Panel.

VI. Replacement for Public Transportation Projects

- A. For individual public road projects that impact wetlands for the emergency repair of a currently serviceable existing state, city, county, or town public road, when the need for the repair is a result of the natural disaster, MN Rule 8420.0544, Item D(2)(c) does not apply provided that:

- 1) the information required under MN Rule 8420.0544, Item D(2) is submitted within 120 days of commencing the emergency repair work.

BWSR may extend the timeframe for submittal of project information with notice to the Technical Evaluation Panel.

AND furthermore, the Board authorizes the Executive Director to order enactment of the above general and specific standards in accordance with Section I above for the DR-4069 area.



August 23, 2012

Date: _____

Brian Napstad, Chair
Board of Water and Soil Resources